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Welcome and Introduction

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James Blanchard Hon.

James S. Peterson Hon.

Christopher Sands

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WELCOME AND INTRODUCTION

Speaker – Daniel Ujczko
United States Speaker – Hon. James Blanchard
Canadian Speaker – Hon. James S. Peterson, P.C.
Speaker – Christopher Sands

INTRODUCTION

Daniel Ujczko

MR. UJCZO: Good morning. I am Dan Ujczko, the Managing Director of the Canada-United States Law Institute.¹ On behalf of the Institute, our Executive Committee, Advisory Board, and our two founding institutions, Case Western Reserve University School of Law and The University of Western Ontario Faculty of Law, I welcome you to the twenty-eighth Henry T. King, Jr. Annual Conference on Canada-United States relations.

For those of you who are first-timers, the bell is a tradition that dates back to the first conference,² and you will be hearing it throughout this weekend's proceedings. I have already broken one of Henry's long-standing rules. We are running a bit behind this morning but our panels are built with a little bit of squish time.

I do want to point out a few nuts and bolts issues for everyone. Things are a little bit different this year, particularly for those of you that have come here over several years—many, many years in some cases. The first is to please be sure that you wear your nametag throughout the proceedings.

¹ *Dan Ujczko—Biography*, CAN.-U.S. L. INST., http://cusli.org/conferences/annual/annual_2011/bios/bio_ujczko.html (last visited Dec. 31, 2011). Mr. Ujczko acted as the Managing Director of the Canada-United States Law Institute from 2004 to May 2011. He is presently the Economic Relations and Regulatory Affairs Officer at the Consulate General of Canada in Detroit, Michigan.

² See Dan Ujczko, *Conference Introduction and Welcome, Proceedings of the Canada-United States Law Institute Conference on Comparative Legal Aspects of Entrepreneurship in Canada and the United States*, 33 CAN.-U.S. L.J. 1, 1 (2007) (stating that the bell has been a part of the conference for the past twenty-three years).

Secondly, I refer you to the goodie bag that you have received, the black bag from Connect2Canada³ and our colleagues at the Canadian Embassy in Washington. Included in this bag are a number of informational materials from Positively Cleveland, our convention and trade bureau here in the great State of Ohio, but also the updated Conference agenda, speakers, where you need to be, and most importantly, our Conference sponsors are listed in the materials.

If you have any questions during the proceedings, you can see that a number of our students are here. There is also an overflow room across the way where they are camped out. Our students will be in and out of that room throughout the day. We also have a talented professional administrative team out in the front that you have seen this morning: Nancy Pratt, Alice Simon, and Jared Gregory. So if you have any questions, comments, or concerns, those are the people to talk to, as well as myself. They are here to help. They have been engaged with this Conference night and day for about the past year. So with that, I will refer you to them for any questions.

I want to thank two people in particular for organizing this Conference. Our two Conference Co-Chairs, Chris Sands of the Hudson Institute⁴ and David Crane, a syndicated journalist in Toronto,⁵ have dedicated essentially the past year of their lives to organizing this Conference. Many of you have been on the receiving end of those phone calls asking you to come and speak or participate, and without them this conference would not be possible. Thank you, Chris and David.

And beyond that, we have a talented Advisory Board that just met this morning. Actually, because they are so active, we are a little bit late on starting this morning.

Many of the members of our Executive Committee will meet throughout the Conference and we will be introducing them throughout the proceedings. Our two Executive Committee Co-Chairs are the driving force behind the Institute and it is my great privilege, and even greater pleasure, to introduce our Co-Chairs, Minister James Peterson⁶ of Fasken Martineau and Governor

³ *About Connect2Canada*, CONNECT2CANADA, <http://www.connect2canada.com/about-apropos/> (last modified Nov. 13, 2011).

⁴ *Christopher Sands—Biography*, HUDSON INST., <http://www.hudson.org/sands> (last visited Dec. 31, 2011).

⁵ *David Crane—Biography*, CAN.-U.S. L. INST., http://cusli.org/conferences/annual/annual_2011/bios/bio_crane.html (last visited Nov. 13, 2011).

⁶ *Hon. James S. Peterson P.C. —Biography*, FASKEN MARTINEAU, <http://www.fasken.com/lawyers/detail.aspx?professional=8eab55ff-0dc4-4a3f-aff9-bcbefec1e89e> (last visited Nov. 13, 2011).

James Blanchard.⁷ I will now invite Governor Blanchard to say a few words this morning.

MR. BLANCHARD: Let us start with Jim Peterson. We will let the defendant go first.

CANADIAN SPEAKER

Hon. James S. Peterson, P.C.

MR. PETERSON: Let me say this. I could not be more honored to be a Co-Chair of this with Jim Blanchard. I met Jim when he was appointed the Ambassador from the United States to Canada, and we have kept in touch ever since. I must tell you that in all the years that I have been involved in the Canada-United States relationship, Jim Blanchard brought more to it than any of his predecessors or successors.

Back in 1995, Canada was embroiled, as many of you know, in the issue of the separation of Québec.⁸ The polls were looking very bad for keeping Canada united on the eve of the referendum.⁹ In international relations, one knows there is a law that one can never interfere in the internal matters of another state.¹⁰ Jimmy broke that rule and brought President Clinton into the host of problems in Ottawa, where Clinton talked about the need for a strong united Canada to the north of the United States.¹¹ We won the referendum by about 51,000 votes¹² and that was what did it. Jimmy, you have done more for our country than anybody else in this room ever has done or ever will do. And it is just great to be working with you here at the Canada-United States Law Institute, a unique institution, and one where, together, we have the opportunity to build that incredible relationship between the two closest neighbors and the two closest friends on Earth.

⁷ *James J. Blanchard—Biography*, DLA PIPER, http://www.dlapiper.com/james_blanchard/ (last visited Nov. 13, 2011).

⁸ See Sylvie M. Beaudreau, *Quebec*, in CANADIAN ANNUAL REVIEW OF POLITICS & PUBLIC AFFAIRS 1995, 124 (David Leyton-Brown ed., 2002) (stating that the Québec referendum was the dominating issue in Canada in 1995).

⁹ See JOHN FOX ET AL., THE POLLS AND THE 1995 QUEBEC REFERENDUM 7 (1998) (stating that polls on the eve of the referendum were “too close to call”).

¹⁰ G.A. Res. 36/103, ¶ 8, U.N. Doc. A/RES/36/103 (Dec. 9, 1981).

¹¹ William J. Clinton, Remarks to the Canadian Parliament in Ottawa (Feb. 23, 1995), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=51017#axzz1kgRYJsuJ> (last visited Jan. 27, 2012).

¹² See generally MOLLIE DUNSMUIR & BRIAN O’NEAL, BACKGROUND TO THE INTRODUCTION OF BILL C-20, THE CLARITY BILL 6 (2000) (stating the voting differential for the 1995 Referendum).

Dan, you have done a remarkable job, you and everybody else, in making this happen. I am very thankful to you and I think we are going to see the results of your incredible efforts at this conference, which so many people have attended.

We welcome you, we thank you for being here, and we look forward to your participation not only today but in the future of this unique institution and in the history of our two great countries.

MR. UJCZO: Thank you, Minister. Governor Blanchard.

UNITED STATES SPEAKER

Hon. James Blanchard

MR. BLANCHARD: Jim Peterson read that just the way I wrote it. I could listen to you all day, Jim.

MR. PETERSON: I wish my wife would say that.

MR. BLANCHARD: Anyway, welcome all of you. I have worked with Jim, as you can probably tell, for a long time¹³ and, as you know, he served with distinction in the Cabinet of Canada.¹⁴ He has been a Member of Parliament,¹⁵ or was now a Member of Parliament, for many, many years, and actually was also a real live practicing lawyer, a tax lawyer.¹⁶ As I recall, you actually taught in a law school,¹⁷ is that not correct? So we have a real live bona fide lawyer and academic, as well as a distinguished diplomat and trade minister for Canada.

I want to echo what you said about Dan. Dan has been the real mainstay of this Institute. We appreciate all of your work, and I was glad that you mentioned that we ought to also acknowledge Nancy Pratt, Alice Simon, and Jared Gregory for their work. They are probably outside in the hallway worrying about registrants and other things, but these kinds of conferences do not just happen by sending out mailers. They do not.

I want to thank our Executive Committee as well, especially my partner, Rick Newcomb,¹⁸ who helped rope me into this role. I appreciate that. Our

¹³ See generally *Hon. James S. Peterson P.C.—Biography*, *supra* note 6 (noting Minister Peterson's extensive work with the Canadian Government); see also *James J. Blanchard—Biography*, *supra* note 7 (stating that Mr. Blanchard became Ambassador to Canada in 1996).

¹⁴ *Hon. James S. Peterson P.C.—Biography*, *supra* note 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Richard Newcomb—Biography*, DLA PIPER, http://www.dlapiper.com/richard_newcomb/ (last visited Nov.13, 2011).

Executive Committee has spent a lot of time worrying about what our future is, what our mandate is, and what our mission is.¹⁹ Also, to the Consulate, the Canadian Consulate in Detroit,²⁰ how much we appreciate their leadership and support.

Roy Norton will be here sometime today.²¹ He is the Consul General. George Costaris is here somewhere.²² George has been kind of the memory bank and the brain box for the Consulate since 1982, and we appreciate George's leadership. I see also that the former Consul General, John Tennant, is here.²³ So it is a delight to see you again; we have truly enjoyed working with you.

We also have a distinguished bankruptcy judge, Randolph Baxter, here.²⁴ It is great to have a little judicial presence with us.

I want to give a special welcome to some of the newer participants as well. I cannot list all of you but I am very pleased we have a couple law firms from Michigan: Dickinson Wright²⁵ and Miller Canfield.²⁶ Michigan State University is here, as well as my friends from Enbridge²⁷ and Spectra.²⁸ You are going to hear from Al Monaco²⁹ later, but we are really pleased to have Enbridge here. There are other companies I know we will acknowledge to make sure they know how much we value their participation.

Let me just say, it is an interesting time. We were joking earlier about the Canadians. Canada has an election coming up,³⁰ and so Ambassador Doer felt that he could not come here and talk for fear that someone would inter-

¹⁹ See History, CAN.-U.S. L. INST., <http://cusli.org/about/history.html> (last visited Nov. 21, 2011).

²⁰ Consulate General of Canada in Detroit, GOV'T OF CAN., <http://www.canadainternational.gc.ca/detroit/index.aspx> (last modified Dec. 8, 2011).

²¹ Roy B. Norton—Biography, GOV'T OF CAN., <http://www.canadainternational.gc.ca/detroit/offices-bureaux/bio.aspx?lang=eng> (last modified Oct. 21, 2010).

²² George Costaris—Biography, LINKEDIN, <http://ca.linkedin.com/pub/george-costaris/1b/14b/440> (last visited Nov. 13, 2011).

²³ John Tennant—Biography, W2N2, <http://www.w2n2.ca/about> (last visited Dec. 31, 2011).

²⁴ Randolph Baxter—Biography, JUST THE BEGINNING FOUND., <http://www.jtbf.org/index.php?src=directory&view=biographies&srctype=details&refno=123> (last visited Dec. 31, 2011).

²⁵ DICKINSON WRIGHT, <http://www.dickinson-wright.com/Pages/Default.aspx> (last visited Dec. 31, 2011).

²⁶ MILLER CANFIELD, <http://www.millercanfield.com/> (last visited Dec. 31, 2011).

²⁷ ENBRIDGE, <http://enbridge.com> (last visited Dec. 31, 2011).

²⁸ SPECTRA ENERGY, <http://www.spectraenergy.com> (last visited Dec. 31, 2011).

²⁹ Al Monaco—Biography, ENBRIDGE, <http://www.enbridge.com/InvestorRelations/CorporateGovernance/ExecutiveManagement/Al-Monaco.aspx> (last visited Nov. 13, 2011).

³⁰ See ELECTIONS CANADA, 41ST GENERAL ELECTION MAY 2, 2011 OFFICIAL RESULTS (2011) (stating that Canada had an election on May 2, 2011).

pret something he said that might affect the election. He is a wonderful Ambassador for Canada to the United States.³¹ But you are going to hear from his counterpart, our good friend, David Jacobson.³² You will hear from him tonight. David Jacobson is the United States Ambassador to Canada and a fabulous guy. He is also an extremely successful lawyer from Chicago, who was the Deputy Finance Chair for Barack Obama and is a very close friend of Barack Obama and his entire team.³³ So I am really happy to have him here with us tonight.

I should also say that, amidst threats of shutdown and the election in Canada,³⁴ the fact is Canada-United States relations continued to grow and expand.³⁵ This past year trade between the two countries grew twenty-one percent.³⁶ By the way, trade from Canada to Ohio grew twenty-nine percent from last year³⁷ and in the period from 2009 to 2010.³⁸ Trade between Canada and Michigan grew forty-four percent.³⁹ This is why we need a new publicly governed bridge two miles south of the current Ambassador

³¹ Gary Doer—*Biography*, GOV'T OF CAN., <http://www.canadainternational.gc.ca/washington/offices-bureaux/amb/doer/aspx> (last modified Dec. 9, 2009).

³² David C. Jacobson—*Biography*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/biog/130426.htm> (last visited Nov. 13, 2011).

³³ Lynn Sweet, *Chicagoan David Jacobson, Obama Fund-Raiser Tapped for Canadian Ambassador*, CHICAGO SUN-TIMES (June 4, 2009, 4:24 PM), http://blogs.suntimes.com/sweet/2009/06/chicagoan_david_jacobsen_obama.html.

³⁴ See generally Memorandum for the Heads of Executive Departments and Agencies, from Jacob J. Lew, Director, Executive Office of the President (Apr. 7, 2011) (stating that a possible shutdown may occur).

³⁵ See *A Unique and Vital Relationship*, GOV'T OF CAN., <http://www.canadainternational.gc.ca/can-am/offices-bureaux/welcome-bienvenue.aspx?lang=eng> (last modified June 2, 2011) (stating the security, economic, energy security, border cooperation, and environmental partnerships between Canada and the United States).

³⁶ *Canada*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/countries-regions/americas/canada> (last visited Nov. 21, 2011).

³⁷ See George Nelson, *Canadian Counsel Touts Ohio Relationship*, THE BUSINESS JOURNAL, Nov. 7, 2011, available at

<http://business-journal.com/canadian-counsel-touts-ohio-relationship-p20341-1.htm> (stating that trade between Ohio and Canada grew over twenty percent from 2010 to 2011).

³⁸ *State Imports for Ohio*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/state/data/imports/oh.html> (last modified June 9, 2011) (stating that between 2009 and 2010 trade between Canada and Ohio increased 30.5%).

³⁹ *State Imports for Michigan*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/state/data/imports/mi.html> (last modified June 9, 2011) (stating the percentage of increase in imports between Michigan and Canada from 2009 to 2010 was 44.3%).

Bridge,⁴⁰ which indeed will happen thanks to our new Governor in Michigan, who is strongly supportive.⁴¹

But what is often lost, not on Canadians as much as Americans, is the energy relationship, which is incredible.⁴² It is powerful. It is all encompassing. It is not just Hydro-Québec or electricity.⁴³ Of course, we know when the grid shut down what happened to ore, uranium, oil, and gas.⁴⁴ We are going to hear a lot about that and renewables.

Canada has been the largest provider of oil to the United States for years,⁴⁵ somewhat more than Saudi Arabia.⁴⁶ That can grow and grow and grow if we want it to and if we have the right policies. The same is true of natural gas;⁴⁷ although with the new role shale plays, it is hard to know exactly how that will play out.⁴⁸

But this energy relationship is key. Enough so that in the first trip Barack Obama made to Ottawa, they talked about, among other things, oil sands and the need for a clean energy dialogue.⁴⁹ They also discussed the need to work together on research and development and technology, to work together on developing new sources of energy, and to work together on carbon capture and sequestration.⁵⁰ So we are going to be focusing on that, because even

⁴⁰ See COLBY W. SPENCER ET AL., ANDERSON ECONOMIC GROUP, BUILDING A NEW BRIDGE IN DETROIT: A STUDY EVALUATING THE OPTIONS 1 (2011) (stating reasons for why a new bridge is needed and the necessary government support required for a new bridge).

⁴¹ *Id.*

⁴² See *Canada-U.S. Energy Relations*, GOV'T OF CAN., http://www.canadainternational.gc.ca/washington/bilateral_relations_bilaterales/energy-energie.aspx?lang=eng&view=d (last modified Dec. 5, 2011) (explaining that Canada and the United States share the closest energy relationship in the world and listing the various energy relations between Canada and the United States).

⁴³ *Id.*

⁴⁴ See PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, ONTARIO-U.S. POWER OUTAGE: IMPACTS ON CRITICAL INFRASTRUCTURE (2006) (stating the energy sectors impacted by power grid shut downs).

⁴⁵ GOV'T OF CAN., *supra* note 42; see also *U.S. Imports by Country of Origin*, U.S. ENERGY INFO. ADMIN. (July 28, 2011), http://205.254.135.7/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbb1_a.htm (listing the amount of annual trade of crude oil and products between the United States and all other countries).

⁴⁶ U.S. ENERGY INFO. ADMIN., *supra* note 45.

⁴⁷ See *U.S. Natural Gas Imports by Country*, U.S. ENERGY INFO. ADMIN. (Oct. 28, 2011), http://205.254.135.7/dnav/ng/ng_move_imp_c_s1_a.htm (stating the annual import volumes of natural gas between the United States and Canada).

⁴⁸ See Richard A. Kerr, *Natural Gas From Shale Bursts Onto the Scene*, 328 SCI. 1624 (2010) (stating the uncertainties of shale and the role uncertainty should play in government action).

⁴⁹ Press Release, President Obama and Prime Minister Harper of Canada, Ottawa, Canada (Feb. 19, 2009).

⁵⁰ *Id.*

though there is probably an energy conference every week in every state, and at least one a week in Washington, D.C., there has been precious little dialogue about whether we do not need some sort of jointly harmonized, synchronized climate change policy between Canada and the United States.⁵¹

I do not see how anyone is going to legislate or regulate or pontificate on these issues in isolation. This is probably true of Mexico, as well; however, the major relationships we are talking about today are between Canada and the United States.

So that is kind of the genesis of this Conference and, of course, we are very lucky to have Chris Sands and David Crane to co-chair this and give it the intellectual energy, the pizzazz, and the prestige that we feel the subject deserves.⁵²

So I want to thank you, as well, and thank everyone else, and I guess my job now is to turn this over to Chris Sands. Thank you.

SPEAKER

Chris Sands

MR. SANDS: Welcome, everybody. It is a great honor to be at my second Canada-United States Law Institute meeting and already I have been dragooned into doing program co-chairing, which is a sign of just how influential our leadership is. They twist arms gently but firmly, so I could not help but want to get involved.

David Crane, my Conference Co-Chair, and I are in a fortunate position. David is a syndicated journalist that you most likely are reading every week or every day.⁵³ Think-tank guys, like me,⁵⁴ we have lots of time to go to conferences, lots of time to attend interesting talks. So as a result, what we have tried to do with this program is give you sort of a greatest hits of some of the most interesting thinkers and some of the most provocative people to really move this forward. This is not a basic primer that tells you what you already know but brings in people who can really tell you where policy thinking is going, where the issues are moving, and where the technology is moving, so that you can be two or three steps ahead of most people who follow issues as important as energy and the environment.

⁵¹ *Id.*

⁵² *Conference Co-Chairs*, CAN.-U.S. L. INST., http://cusli.org/conferences/annual/annual_2011/co_chairs.html (last visited Nov. 21, 2011).

⁵³ *David Crane—Biography*, *supra* note 5.

⁵⁴ *Christopher Sands—Biography*, *supra* note 4.

As most of you know, one of the first Canada-United States agreements between our two countries was the Boundary Waters Treaty of 1909,⁵⁵ which gave us the International Joint Commission and an ability to regulate shared waterways.⁵⁶ The environment brought us together from the very beginning and we found ourselves trading the natural resources, including coal, that helped to power our cities, run our steam engines, and so on.⁵⁷

The very beginning of this relationship was an exchange of energy and a recognition that the environment—no matter how much we like to put up the forty-ninth parallel or other borders—simply crossed the border, whether we liked it or not.⁵⁸ It raised two very important issues: the challenge of coming up with better energy to fuel our growing economies in the industrial age and beyond⁵⁹ and, at the same time, the need for shared governance of those flows across the border, also whether we like it or not.⁶⁰ We have been at this now for some time.

These issues today, because of the importance of climate change and new energy opportunities, bring us back together. I think the people who should be on the cutting edge of this are all of you, the members of the Canada-United States Law Institute.

You will see from the program today a real smattering of just about all the major issues. We are looking at the future of fossil fuels, coal, natural gas, and coal to liquids, as well as oil and cleaner oil.

We are taking a look at electricity and the electricity grid. We are taking a look at regulatory systems from carbon taxes to cap-and-trade and where the future might take us. We are looking at the interaction of the two systems between Canada and the United States and how our interaction can either compete or bring us together.

We will take a look at some of the new thinking on commercial freight and what we can do to address a particular sector. We will look at the roles of states and provinces, which is not just federal/federal. We will try to make sure that they are given their due. We will look at where they may be innovating and showing the way. So it is an exciting program. We are very pleased to have had the chance to pull it together for you.

⁵⁵ Boundary Waters Treaty, U.S.-Can., Jan. 11, 1909, 36 Stat. 2448.

⁵⁶ *Id.* at art. VIII.

⁵⁷ Secretary of State Hillary Rodham Clinton, Remarks at the 100th Anniversary of the Boundary Waters Treaty (June 13, 2009).

⁵⁸ See ELEC. ENERGY CONSULTATION ADVISORY COMM., MEETING OUR ELECTRICAL ENERGY NEEDS TO 2030 iii (2008) (stating the present issues along the shared Canadian-United States border and the collective efforts to identify energy options).

⁵⁹ See *id.*

⁶⁰ See *id.*

So with that, let me just stop and introduce my very distinguished—more distinguished than me—Co-Chair for the program, David Crane, to introduce the first panel.

FINAL REMARKS

David Crane

Daniel Ujcz

MR. CRANE: Thanks, Chris. I have a chance, as the moderator of the next panel, to say a few words, so all I will say now about the Conference, which Chris has summarized very well, is that what we really hope to do is to explain why there is such a huge gap between what we know and what we do in our societies. That is what energy policy is really all about,⁶¹ as well as how we can close that gap.

We have a lot of information, a lot of data, a lot of scientific and technological information, and yet we seem to be finding it very hard to take that information and change the things we do. So as I say, our challenge is to try to understand why there is this gap between what we know and what we do, and how we close the gap. Thanks.

MR. UJCZO: Do not sit down just yet, David. I would invite our first panel down to the podium: Carl, Meera, and David.

While they are coming down, just in terms of nuts and bolts, I do welcome the audience that is viewing this on webcast, both watching this throughout the country or throughout the continent. With that in mind, this is being recorded for various purposes such as live broadcast and will be used on-line for both the Canada-United States Law Institute, the Ohio Bar Association, et cetera.⁶²

In the vein that everything is on the record, in your materials, you have the most up-to-date, hot-off-the-press version of the Canada-United States Law Journal,⁶³ which is last year's edited proceedings and some student work that has been published, so we encourage you to review this. Again, these

⁶¹ See generally AMERICAN ASSOCIATION OF ENGINEERING SOCIETIES ET AL., NATIONAL ENERGY POLICY GOALS PROCLAMATION 1 (2009) (stating a need for continued research and implementation of additional energy resources).

⁶² See generally *Webcast Panels*, CAN.-U.S. L. INST., http://cusli.org/conferences/annual/annual_2011/webcast_panels.html (last visited Nov. 21, 2011) (listing the various webcasts available for viewing).

⁶³ *Proceedings of the Canada-United States Law Institute Henry T. King, Jr. Annual Conference on the Canada-United States Regulatory Regime: Review, Reform, Recovery*, 36 Can.-U.S. L.J. 1 (2011).

proceedings will be published. And we welcome the many students from Case Western Reserve University as well as our guests here from the University of Western Ontario who have traveled to be here. You can see those faces throughout.

So with that, I will turn it over to David Crane.

